ances by use[7] or devise[8] than as to conveyances by the common-law methods. Sporadic *dicta* raised[9] and left unsettled[10] the problem of the effect of a conveyance to A and B, "their executors, administrators and assigns." In a recent decision this form of words is held to be indistinguishable from a transference to A and B without more, and accordingly to create a joint tenancy. *Goddard* v. *Lewis*, 25 T. L. R. 813 (Eng., K. B. D., July 31, 1909). The result is admittedly unfortunate: that the purchasers of the term did not contemplate a right to the whole in the survivor is undoubted. And to attain its conclusion the court is driven to regard the naming of the personal representative as for all purposes surplusage.[11] But it is true that the purpose of naming the executors was the limitation of the estate granted, and not the determination of the type of collective interest created; so that the doctrine of a technical decision reduces itself to a highly technical rule, that words of severance must profess to be such.

It is probable that nowhere in this country, at least as to interests in land, would the decision in the principal case have been reached. In one or two jurisdictions the courts without legislative aid have either limited[12] or denied[13] the English presumption in favor of joint tenancies; and in Connecticut, which accepted the presumption, the right of survivorship has been rejected.[14] For the most part, however, the courts of this country have followed the English decisions.[15] But legislation has now everywhere either reversed the English presumption,[16] or abolished the right of survivorship,[17] or altogether done away with joint tenancies.[18]

EFFECT OF REVOCATION OF PROBATE UPON RIGHTS OF LEGATEES. — A legatee's title to specific property bequeathed to him is said to relate back, upon the assent of the executor, and to vest in him as of the time of the testator's death.[1] If, then, after final settlement of the estate, a codicil is discovered and admitted to probate, revoking a legacy of certain shares of stock to A and bequeathing them to B, the title vested in B by the executor's assent covers, by relation back, the entire period during which the shares have been held by A. Since A has thus received what rightfully

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[7] Rigden *v.* Vallier, 2 Ves. 252.

[8] Fisher *v.* Wigg, 1 P. Wms. 14.

[9] Crooke *v.* De Bandes, 9 Ves. Jr. 197, 204; Jackson *v.* Jackson, 9 Ves. Jr. 591, 595.

[10] As reported in Moseley, 184, Cray *v.* Willis is a square decision for holding a joint tenancy on these facts; but in the report in 2 P. Wms. 529, the crucial words "and executors" do not appear.

[11] *Cf.* on this point the ingenious article in 3 Law Stud. Mag. (N. S.) 324 anticipating the facts of this case and contending for a result opposite to the actual one.

[12] Martin *v.* Smith, 5 Binn. (Pa.) 16.

[13] Vreeland *v.* Van Ryper, 17 N. J. Eq. 133.

[14] Phelps *v.* Jepson, 1 Root (Conn.) 48.

[15] Decamp *v.* Hall, 42 Vt. 483; Farr *v.* Trustees of Grand Lodge, etc., 83 Wis. 446.

[16] *Cf.* Birdseye Rev. Stat. (N. Y.) 3023. This is the most common form of legislation on the subject.

[17] *Cf.* Virginia Code, § 2430. The earliest of such statutes was doubtless that of the Plymouth Colony passed in 1643. See Plymouth Colony Laws, ed. 1836, 75.

[18] *Cf.* Georgia Code, § 3142. In jurisdictions of this type an attempted joint tenancy is declared a tenancy in common.

[1] See Saunders' Case, 5 Coke 12 a, 12 b.

belongs to B, who has no remedy against the innocent executor,[2] the situation is analogous to that where one of two legatees has been fully paid out of assets insufficient to satisfy both,[3] and the executor is insolvent;[4] accordingly, if the shares are still in A's possession, B should be allowed in equity to compel A to give them up.[5]

A recent case goes still farther, allowing B to recover from A all dividends received by the latter on the stock. *West* v. *Roberts*, [1909] 2 Ch. 180. The law in England is that a residuary or general legatee who is obliged to refund is generally not chargeable with interest;[6] but in this country at least one court has said that interest as well as principal must be refunded.[7] The case of a specific legacy is a stronger one: unlike that of a general or residuary legatee,[8] the specific legatee's right is clear-cut and defined, so that it will support an action at law immediately upon the assent of the executor.[9] And title to the shares must carry with it title to the dividends. It does not follow, however, that under all circumstances A should be made to account for these dividends. If he has spent the income and has no tangible property to show for it, the court in forcing him to account would be invoking the fiction of relation back to the impoverishment of one who acted innocently in pursuance of judicial authority.[10] Prior to the revocation of the original probate, legal title is indisputably in A,[11] so that if he has sold to a *bonâ fide* purchaser the title of the latter could not be impeached.[12] A, therefore, has innocently but gratuitously acquired legal title to property which of right belongs to B. The resemblance of his position to that of an innocent donee of trust property suggests the propriety of treating A as an innocent constructive trustee.[13]

A strict adherence to the doctrine of relation back would involve the court in the absurdity of holding that legal ownership in severalty is vested in two persons at the same time. But if B's interest, prior to the revocation of the first probate, be called an equitable one, and if A be treated as an innocent donee of trust property, his liability to account for the dividends will depend upon whether or not that income is still in his possession, either in its original form or in the shape of a traceable product.[14] If it is in his possession, there is no injustice in taking from him something which he has received as a mere windfall; but if the money has been spent, and he has nothing to show for it, he should not be held to account.

DISREGARDING THE SEPARATE PERSONALITY OF A CORPORATION. — The conception of a corporation as a personality wholly separate and dis-

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[2] Poag *v.* Carroll, Dud. Law (S. C.) 1.
[3] Anon., 1 P. Wms. 495.
[4] Orr *v.* Kaines, 2 Ves. 194; Wallace *v.* Latham, 52 Miss. 291.
[5] *Cf.* Le Baron *v.* Fauntleroy, 2 Fla. 276, 301.
[6] Gittins *v.* Steele, 1 Swanst. 199; Jervis *v.* Wolferstan, L. R. 18 Eq. 18, 27.
[7] See Buerhaus *v.* De Saussure, 41 S. C. 457.
[8] Deeks *v.* Strutt, 5 T. R. 690.
[9] Doe d. Saye *v.* Guy, 3 East 120; Williams *v.* Lee, 3 Atk. 223.
[10] *Cf.* Allen *v.* Dundas, 3 T. R. 125.
[11] Thompson *v.* Samson, 64 Cal. 330. *Cf.* Fisher *v.* Bassett, 9 Leigh (Va.) 119.
[12] Steele *v.* Renn, 50 Tex. 467. *Cf.* Packman's Case, 6 Coke 18 b.
[13] Otis *v.* Otis, 167 Mass. 245.
[14] See 19 HARV. L. REV. 515 *et seq.*